

FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, D.C. 20554

AUG 16 2 50 PM '94

DISPATCHED BY MM Docket No. 94-92

In re Applications of

BOARD OF REGENTS, File No. BPED-930114MA
STATE OF
FLORIDA, ACTING FOR AND ON
BEHALF OF THE UNIVERSITY OF
FLORIDA
(hereafter "UF")

MARION COMMUNITY File No. BPED-930413MA
RADIO, INC.
(hereafter "Marion")

For Construction Permit for a New
Noncommercial Educational Station
on Channel 215A in Crystal River,
Florida

HEARING DESIGNATION ORDER

Adopted: July 26, 1994;

Released: August 16, 1994

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new, non-commercial, educational FM station.

2. *UF's waiver request.* UF requests a waiver of Section 73.1125 of the Commission's Rules, the "main studio rule," to permit it to operate its proposed new noncommercial FM station as a satellite of station WUIT(FM), Gainesville, Florida. UF states that the new station will make use of a dual studio-transmitter link ("STL") that will allow it to produce discrete programming for the Citrus County region. Thus, UF will be able to provide public affairs and other programming for the region that is independent of WUIT(FM) broadcasts at a time when it could not afford to build and staff a full-time studio in the region. UF also states that there has been community interest in receiving UF programming because Citrus County is unable to receive a public radio signal. UF notes that it has a proven track record of successful programming for public radio listeners and it believes that the grant of the subject application will help to reduce public "white space" in this nation. UF also states that it will provide a toll free telephone number for communication to the main studios of Gainesville.

3. UF further notes that it has had extensive recent ties with the Citrus County region and secured numerous letters and other evidence of support from the area. Moreover, it has an ongoing ascertainment process which it utilizes in connection with existing operations and this process will be brought into play in examining on a regu-

lar basis the needs and interests of the Citrus County region. UF concludes that through its existing procedures and future plans, it believes that it will be well positioned to ascertain the needs of the Citrus County region and to provide a wide range of valuable programming services to that area.

4. A "satellite" station has been defined by the Commission as one "operating on a Channel specified in the rules, but one which usually originates no local programming.... It rebroadcasts the programming of the parent station." *Multiple Ownership Rules*, 3 RR 2d 1554, 1562 (1964). In the past, the Commission has recognized the economic benefits of centralized operations for noncommercial educational stations. See *Memorandum Opinion and Order* in MM Docket 86-406, 3 FCC Rcd 5024, 5027 (1988). Because of the limited funding available to these stations, we have granted waivers to state and regional public television and radio networks to operate "satellite" stations that do not meet the main studio requirements. See *Nebraska Educational Television Commission*, 4 RR 2d 771 (1956) and *Sound of Life, Inc.*, 4 FCC 2d 8273 (1989). However, these stations have not been permitted to ignore local service obligations. See *Georgia State Board of Education*, 70 FCC 2d 948 (1979). The Commission has never "indicated, directly or indirectly, that licenses were granted to state educational networks for the purpose of providing statewide service and not local service." *Id.* at 956. Waivers generally have been granted "only upon a showing that the local community would be served ... [and] such stations will be subject to the local toll free telephone requirements." 3 FCC Rcd at 5027. See also 47 C.F.R. § 73.1125(c).

5. UF has established that even without a main studio in the service area of the proposed station, it will determine local needs and respond to them in its programming. Accordingly, UF's request for waiver of 47 C.F.R. § 73.1125 will be granted.

6. *Other issues.* Section II, Item 8 of FCC Form 340 requires that an applicant specify the residence address (number, street, city, state) of its Board Members. UF has not completed item 8 correctly. UF gives either post office box or business addresses for Board Members Charles R. Edwards, Sr., J. Clint Brown, Dubose Ausley, Betty Castor, Alec P. Courtelis, Pat N. Groner, Cecil B. Keene, Jon C. Moyle, Thomas F. Perway, III, and Ross A. Wolf. Accordingly, UF must submit an amendment which gives the correct information required by Section II, Item 8 to the Presiding Administrative Law Judge after this Order is released.

7. Inasmuch as it appears that there would be a significant difference in the size of the areas and populations which would receive service from the UF and Marion proposals, and since this proceeding involves competing applicants for noncommercial educational facilities, the standard areas and populations issue will be modified in accordance with the Commission's prior action in *New York University*, 10 RR 2d 215 (1967). Thus the evidence adduced under this issue will be limited to available noncommercial educational FM signals within the respective service areas.

8. Neither of the Applicants has indicated that an attempt has been made to negotiate a share-time arrangement. Therefore, an issue will be specified to determine whether a share-time arrangement between the applicants would be the most effective use of the frequency, and thus better serve the public interest. *Granfalloon Den-*

ver Educational Broadcasting, Inc., 43 Fed. Reg. 49,560 (October 24, 1978). In the event that this issue is resolved in the affirmative, an issue will also be specified to determine the nature of such an arrangement. It should be noted that our action specifying a time-sharing issue is not intended to preclude the applicants, either before the commencement of the hearing or at any time during the course of the Hearing, from participating in negotiation with a view toward establishing a share-time arrangement.

9. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

10. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine: (a) the number of other reserved channel noncommercial educational FM services available in the proposed service area of each applicant, and the area and population served thereby; (b) whether a share-time arrangement between the applicants would result in the most effective use of the channel and thus better serve the public interest and, if so, the terms and conditions thereof; and (c) in light of Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient and equitable distribution of radio service.
2. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if either.

11. IT IS FURTHER ORDERED, That UF's request for waiver of Section 73.1125 of the Commission's Rules IS HEREBY GRANTED.

12. IT IS FURTHER ORDERED, That UF shall submit an amendment which contains the information required by Section II, Item 8 of FCC form 340, to the Presiding Administrative Law Judge within 30 days after the release of this order.

13. IT IS FURTHER ORDERED, That a copy of each document filed in this proceeding subsequent to the day of adoption of this Order shall be served on the counsel of record in the Hearing Branch appearing on behalf of the Chief, Mass Media Bureau. Parties may inquire as to the identity of the counsel of record by calling the Hearing Branch at (202) 632-6402. Such service shall be addressed to the named counsel of record, Hearing Branch, Enforcement Division, Mass Media Bureau, Federal Communications Commission, 2025 M Street, N.W., Suite 7212, Washington, D.C. 20554. Additionally, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Federal Communication Commission, Room 350, 1919 M Street, N.W., Washington D.C. 20554.

14. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attor-

ney within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issue specified in this Order.

15. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

Linda B. Blair, Assistant Division Chief
Audio Services Division
Mass Media Bureau